IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 767 OF 2000

The Commissioner of Income Tax ... Appellant
Mumbai City V, Mumbai.

V/s.

Birla AT & T Communication Ltd. ... Respondent

Mr.A.N. Kotangale for the appellant.
Mr.R. Muralidhar i/b. Rajesh Shah & Co. for respodent.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR,JJ.
DATED : 1st August, 2006

P.C.

. Heard Mr. Kotangale in support of this appeal. Mr. Murlidhar appears for the respondent. The revenue is seeking to raise a question with respect to the decision of the Income Tax Appellate Tribunal concerning the disallowance of the deduction under Section 35ABB for the accounting year 1996-97. What has happened is that Section 143(1)(a) has been amended retrospectively and it was provided there under that a deduction prima facie admissible leads to a permissible adjustment. This is provided in clause (ii) proviso (ii) of this section. The Tribunal in the impugned order has held in paragraph 10 of the order that assessee’s claim appears to be prima facie acceptable and there was scope for debate and argument

as to whether assessee has right for claiming 1/10th of the licence fee for the year 1996-97. Once Tribunal held that it was prima facie acceptable case, it cancelled the levy of additional income tax. Retrospective amendment permitted the Tribunal to take such a view and therefore no interference is called for. The appeal is rejected.

[H.L. GOKHALE, J.]

[V.R. KINGAONKAR, J.]